

AL-2-1985-01
#1
CANADIANA

SEP 19 1984



GOVERNMENT OF THE PROVINCE OF ALBERTA

PROVINCIAL COURT ACT

**Revised Statutes of Alberta 1980, Chapter P-20
with amendments in force as of June 7, 1984
not including unproclaimed amendments**

Consolidated July 10, 1984

OFFICE CONSOLIDATION

Published by Authority of
the Queen's Printer

Distributed by:

Publication Services
11510 Kingsway Avenue
Edmonton. T5G 2Y5
427-4952

and

Publication Services
Rm. 601, J. J. Bowlen Bldg.
620 - 7th Avenue S.W.
Calgary. T2P 0Y8
297-6251

\$1.25

DDN
5771334

NOTE

All persons making use of this consolidation are reminded that it has no legislative sanction, that the amendments have been embodied for convenience of reference only, and that the original Acts should be consulted for all purposes of interpreting and applying the law.

UNPROCLAIMED AMENDMENTS

This consolidation incorporates only those amendments in force on the date shown on the cover. It does not include the following amendments not proclaimed in force on that date:

1984 cC-8.1 s104, which amends ss22 and 27.

REGULATIONS

The following is a list of the regulations made under the *Provincial Court Act* that are filed as Alberta Regulations under the *Regulations Act* as of the consolidation date shown on the cover:

Provincial Court Act

Fees and Expenses for Witnesses and Interpreters	123/84
Provincial Court of Alberta Seal	255/80
Returns	417/68
<i>Amended by</i>	129/69, 68/74, 361/78, 399/78, 34/79, 162/79, 191/81
Sittings of the Provincial Court	144/80
<i>Amended by</i>	414/81
Tariff of Fees	145/80
<i>Amended by</i>	184/83

PROVINCIAL COURT ACT

CHAPTER P-20

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) “clerk” means a clerk or deputy clerk of the Provincial Court;
- (b) “judge” has the same meaning as in the *Provincial Court Judges Act*;
- (c) repealed 1981 cP-20.1 s21;
- (d) “Provincial Court” or “Court” means The Provincial Court of Alberta.

RSA 1980 cP-20 s1; 1981 cP-20.1 s21

PART 1

THE PROVINCIAL COURT OF ALBERTA

The Provincial Court

2(1) There shall be a provincial court for Alberta to be styled “The Provincial Court of Alberta”.

(2) The Court shall consist of the following divisions:

- (a) the Criminal Division to be styled “The Criminal Division of The Provincial Court of Alberta”;
- (b) the Youth Division to be styled “The Youth Division of The Provincial Court of Alberta”;

(c) the Family Division to be styled “The Family Division of The Provincial Court of Alberta”;

(d) the Small Claims Division to be styled “The Small Claims Division of The Provincial Court of Alberta”;

(e) any other division established by the Lieutenant Governor in Council.

(3) The Provincial Court is a court of record.

RSA 1980 cP-20 s2; 1984 cY-1 s38

3 to 14 Repealed 1981 cP-20.1 s21.

Staff

15(1) In accordance with the *Public Service Act* there may be appointed

(a) officers and employees required to conduct the business of the Court, and

(b) repealed 1981 cP-20.1 s21.

(2) The Attorney General may designate any officer or employee appointed under subsection (1)(a) as a clerk or deputy clerk.

RSA 1980 cP-20 s15; 1981 cP-20.1 s21

Delegation of
clerk's duties

16(1) A clerk may authorize in writing a person to do any act or thing required or permitted to be done by a clerk under this or any other Act.

(2) An authorization given under this section may be

(a) general or applicable to a particular case, and

(b) conditional or unconditional.

(3) An authorization given under subsection (1)

(a) purporting to be signed by the person giving it, and

(b) stating that the person named in it is authorized under this section to do the act or thing set forth in the written authorization,

or a copy of it, shall be admitted in evidence as prima facie proof of that person's authorization to do the act or thing without proof of the signature or official character of the person appearing to have signed the authorization.

RSA 1980 cP-20 s16

Duties of clerk

17 In addition to performing the duties prescribed under this Act or any other Act, a clerk shall perform those duties assigned to him by the Attorney General.

RSA 1980 cP-20 s17

Powers of clerk

18 A clerk, for the purpose of matters directed by the Court to be taken before him, has power to administer oaths, take affidavits and statutory declarations, receive affirmations and examine parties and witnesses, as the Court may direct.

RSA 1980 cP-20 s18

Duties of
sheriffs, etc.

19 Sheriffs, deputy sheriffs, persons employed at correctional institutions and peace officers shall give assistance to and comply with the directions of the Court and the judges in the exercise of the jurisdiction of the Court.

RSA 1980 cP-20 s19

20 Repealed 1981 cP-20.1 s21.

Regulations

21(1) The Lieutenant Governor in Council may make regulations

- (a) to (d) repealed 1981 cP-20.1 s21;
 - (e) establishing divisions of the Court in addition to divisions referred to in section 2(2)(a) to (d);
 - (f) prescribing the locations at which the Court will hold sittings;
 - (g) respecting costs that may be awarded in respect of proceedings in the Court;
 - (h) governing the rates of fees and expenses payable to witnesses and interpreters;
 - (i) prescribing fees payable for the filing or issuing of documents in respect of proceedings in the Court;
 - (j) prescribing fees, expenses and other forms of remuneration payable to stenographic reporters;
 - (k) prescribing fees, expenses and other forms of remuneration payable to operators and transcribers of sound-recording machines;
 - (l) respecting any matter necessary and advisable to carry out effectively the intent and purposes of this Act.
- (2) Salaries prescribed pursuant to a regulation made under subsection (1)(a) shall, if so provided in the regulation, be effective from a date prior to the making of the regulation.
- (3) The Attorney General may make regulations
- (a) prescribing locations at which the Court shall maintain court offices;
 - (b) requiring and governing the making of returns and reports by judges and clerks;
 - (c) prescribing the records that shall be maintained by the Court;
 - (d) providing for the safekeeping, inspection and destruction of books, documents and papers of the Court and judges;
 - (e) providing for the appointment and employment of stenographic reporters to take down evidence in respect of proceedings in the Court;
 - (f) providing for the appointment of operators and transcribers of sound-recording machines when used to record evidence in respect of proceedings in the Court;

(g) defining the classes of cases and conditions in which stenographic reporters may be used;

(h) prescribing forms to be used in the Court or issued by the Court.

RSA 1980 cP-20 s21; 1981 cP-20.1 s21

PART 2

YOUNG PERSONS MATTERS

Definitions

22 In this Part,

(a) “Child Welfare Commission” means the Child Welfare Commission appointed under the *Child Welfare Act*;

(b) repealed 1984 cY-1 s38;

(c) “neglected child” means a neglected child as defined in the *Child Welfare Act*;

(d) “young person” has the same meaning as in the *Young Offenders Act* or the *Young Offenders Act* (Canada), as the case may be.

RSA 1980 cP-20 s22; 1984 cY-1 s38

Powers of Court

23 The Court is a youth court within the meaning of and for the purposes of the *Young Offenders Act* and the *Young Offenders Act* (Canada), and has all the powers vested in a youth court under those Acts.

RSA 1980 cP-20 s23; 1984 cY-1 s38

Judges

24 Each judge of the Court of Queen’s Bench is by virtue of his office a judge of The Provincial Court of Alberta for the purpose of hearing matters that come under the *Young Offenders Act* and *Young Offenders Act* (Canada.)

RSA 1980 cP-20 s24; 1984 cY-1 s38

Complaints

25(1) A complaint under this Part may be sworn before any justice of the peace and any justice of the peace may adjourn any matter from time to time until the matter can be heard by the Court.

(2) A justice of the peace may exercise all duties conferred or imposed on a justice of the peace with respect to judicial interim release by or under any Act of the Legislature or the Parliament of Canada.

RSA 1980 cP-20 s25; 1983 c93 s2

26 Repealed 1984 cY-1 s38.

Neglected children

27 In the case of neglected children, a clerk shall

(a) prepare and keep the reports and information that the Child Welfare Commission requires, and

(b) forward the reports and information at the times and on the forms that the Child Welfare Commission requires.

RSA 1980 cP-20 s27

28 Repealed 1984 cY-1 s38.

PART 3

FAMILY MATTERS

Enforcement of
Queen's Bench
orders

29(1) A person entitled to alimony or maintenance under a judgment or order of the Court of Queen's Bench may file a copy of the judgment or order in the Provincial Court, and when so filed it is enforceable in the same manner as an order made by a judge under Part 4 of the *Domestic Relations Act*.

(2) A person entitled to maintenance under a judgment or order of the Court of Queen's Bench within the meaning of subsection (1) includes a child entitled to maintenance under the judgment or order.

(3) The Provincial Court may not vary the amount of any alimony or maintenance ordered to be paid by a judgment or order of the Court of Queen's Bench filed in the Provincial Court under this section.

RSA 1980 cP-20 s29

Interim
maintenance

30(1) On an application by a person ordered to pay maintenance or alimony to his spouse for an adjournment of a hearing, the Court may, as a condition of granting the adjournment, order that person to pay to his spouse a sum that the Court considers proper for the support of the spouse and the children, if any, during the period of the adjournment.

(2) An order under subsection (1) may order payment to be made in a lump sum or by instalments.

RSA 1980 cP-20 s30

Consent orders

31(1) If the parties to an application

(a) are in agreement respecting the matters in question, and

(b) consent to an order on the terms agreed on,

the Court in its discretion may make the order without holding a hearing.

(2) An order made under subsection (1) has the same force and effect as an order made after a hearing.

RSA 1980 cP-20 s31

Custody orders

32(1) If

(a) the parents of a child are in fact living apart from one another, and

(b) there is a dispute as to the custody of or access to the child,

the Court may, on an application, make an order as it sees fit regarding

(c) the custody of the child, and

(d) the right of access to the child,

by either parent or any other person, having regard to the best interests of the child.

- (2) The application for an order under this section may be made
 - (a) by either parent of the child, or
 - (b) by the child, who may apply with or without any person interested on his behalf.
- (3) An applicant for an order under this section shall
 - (a) apply in person to a clerk, and
 - (b) file with the clerk a supporting affidavit setting out the material facts,

and on being satisfied that there may be reasonable grounds for the making of an order, the clerk shall give written notice to all interested parties to the application to appear at the hearing of the application before the Court.

- (4) If a parent or other interested party
 - (a) has been served with a copy of the written notice, and
 - (b) fails to attend as required by the written notice,

an order may be made in the absence of that person.

(5) Pending the hearing of an application under this section, the Court may issue an interim order setting out the right of access to the child and the terms of that access.

(6) The applicant and all persons that the Court thinks proper may be examined on oath touching the matters in issue.

- (7) The Court,
 - (a) on application for review, and
 - (b) on reasonable notice to the interested parties,

may review an order made under this section and may confirm, vary or discharge the order.

(8) Any person who contravenes a provision as to custody or right of access in an order made under this section is guilty of an offence and liable to a fine of not more than \$1000 or to imprisonment for a term not exceeding 4 months or to both fine and imprisonment.

(9) To the extent that an order made under this section is in variance with an order of the Court of Queen's Bench, the order made under this section is void.

RSA 1980 cP-20 s32

Private hearing

33 Any case arising under this Part may, in the discretion of the Court, be heard in private.

RSA 1980 cP-20 s33

Appeal

34 A party to proceedings under this Part who is dissatisfied with an order or refusal to make an order may appeal to the Court of Queen's Bench and the provisions of section 27 of the *Domestic*

Relations Act relating to appeals apply with all necessary modifications to that appeal.

RSA 1980 cP-20 s34

PART 4

SMALL CLAIMS MATTERS

Definitions

35 In this Part,

- (a) “defendant” means the person to whom a summons under this Part is directed;
- (b) “local authority” means
 - (i) a city, town, new town, village, municipal district or county, or
 - (ii) the Minister of Municipal Affairs, in the case of an improvement district or special area;
- (c) “plaintiff” means a person at whose instance a summons is issued under this Part;
- (d) “school board” means a board as defined in the *School Act*.

RSA 1980 cP-20 s35

Jurisdiction

36(1) Subject to this Act, the Court has jurisdiction to try and adjudicate on

(a) any claim

- (i) for debt (whether payable in money or otherwise) if the amount claimed does not exceed \$2000, and
- (ii) for damages (including damages for breach of contract) if the amount claimed does not exceed \$2000,

and

(b) any counterclaim

- (i) for debt (whether payable in money or otherwise) if the amount counterclaimed does not exceed \$2000, and
- (ii) for damages (including damages for breach of contract) if the amount counterclaimed does not exceed \$2000.

(2) If it appears that

- (a) the claim of a plaintiff, or
- (b) the counterclaim of a defendant

is in excess of the amount prescribed in subsection (1), the plaintiff or the defendant, as the case may be, may abandon that part of his claim that is in excess of the jurisdiction of the Court by filing a notice to that effect with the Court and in that event that person forfeits the excess and is not entitled to recover it in any other action in the Provincial Court or any other court.

RSA 1980 cP-20 s36; 1983 c43 s2

Matters beyond
jurisdiction

37 The Court does not have jurisdiction to hear or adjudicate on a claim or counterclaim

- (a) in which the title to land is brought into question,
- (b) in which the validity of any devise, bequest or limitation is disputed,
- (c) for malicious prosecution, false imprisonment, defamation, criminal conversation, seduction or breach of promise of marriage,
- (d) in replevin,
- (e) against a judge, justice of the peace or peace officer for any thing done by him while executing the duties of his office, or
- (f) by a local authority or school board for the recovery of taxes, other than taxes imposed in respect of the occupancy of or an interest in land that is itself exempt from taxation.

RSA 1980 cP-20 s37

Issue of
summons

38(1) A person who has a claim that may be dealt with under this Part may apply to a clerk for the issuance of a summons.

(2) On an application being made under subsection (1), a clerk shall issue a summons that contains the particulars of the claim as provided by the plaintiff and the place and date set for hearing the matter.

RSA 1980 cP-20 s38

Place of hearing

39(1) The clerk who issues a summons under section 38 shall set the action down for hearing at the place where the Court holds regular sittings that in the opinion of the clerk is nearest

(a) to the place where the defendant or one of the co-defendants resided or carried on business at the time the summons was issued, or

(b) to where the cause of action arose.

(2) An action heard under this Part is not invalid by reason only that it was set down for hearing and heard at a place other than the place provided for under subsection (1).

RSA 1980 cP-20 s39

Change of place
of hearing

40 The Court may, on its own direction or on application by a party to an action, order that an action be heard by the Court at a place other than that set forth in the summons.

RSA 1980 cP-20 s40

Travelling
allowance

41(1) If the defendant lives further than 30 kilometres from the place of trial, the Court in its discretion may, before the summons is issued, require the plaintiff to deposit with the Court a travelling allowance in the prescribed amount calculated on the return distance between the defendant's residence and the place of trial.

(2) The travelling allowance deposited under subsection (1) shall be paid by a clerk of the Provincial Court or, in the case of an appeal, by the clerk of the Court of Queen's Bench

(a) to the plaintiff, if final judgment is given in favour of the plaintiff, or

(b) to the defendant for his personal expenses in attending the hearing if the plaintiff discontinues or if judgment is for any cause given in favour of the defendant.

RSA 1980 cP-20 s41

Date of hearing **42(1)** The date set in the summons for hearing the matter shall not be more than 60 days from the date of the issue of the summons.

(2) Notwithstanding subsection (1), a summons shall be served on the defendant at least 10 days before the date set for the hearing of the matter and if a summons is not so served the matter shall not be heard on that date without the consent of the defendant.

(3) If a summons is not served within the time prescribed by this section, a clerk may issue a new summons in accordance with this Part.

RSA 1980 cP-20 s42

Counterclaims **43(1)** On being served with a summons, a defendant who has a counterclaim may apply to a clerk for the issuance of a statement of counterclaim.

(2) On an application being made under subsection (1), a clerk shall issue a statement of counterclaim that contains the particulars of the counterclaim as provided by the defendant.

(3) If at a hearing a defendant asserts a counterclaim and the plaintiff has not been served with a copy of a statement of counterclaim at least 6 days before the date set for the hearing, the Court may, if in its opinion the plaintiff has been unduly prejudiced, adjourn the hearing to a subsequent date.

RSA 1980 cP-20 s43

Service of documents **44(1)** Service of documents issued under this Part, other than notices to attend, may be made

(a) on the person to be served, either personally or by leaving a copy of the document for him at his most usual place of abode with some resident of the abode apparently 16 years of age or older,

(b) by mailing the copy to the person to be served by double registered mail or certified mail to his last known post office address and service shall be deemed to be effected at the time the copy is delivered by an official of the post office to the person to be served or to any person receiving it on his behalf, or

(c) as directed by the Court.

(2) In any action by or against a partnership, service of a document on one of the partners is service on the partnership.

(3) Service of a document on a local authority or school board may be made by serving the mayor, reeve, chairman, clerk, secretary,

secretary-treasurer or the Minister of Municipal Affairs, as the case may be.

(4) Service of a document on a corporation other than a local authority or school board may be made

(a) by serving the president, head officer, a director or the secretary of the corporation,

(b) by serving a manager, agent or officer of the corporation transacting business on behalf of the corporation in the judicial district in which the action was commenced, or

(c) by leaving it at or sending it by registered mail to the registered office of the corporation.

(5) Service of any document issued under this Part may be effected on any day including Sunday.

RSA 1980 cP-20 s44; 1981 c33 s2

Notice to attend

45(1) A party to an action under this Part may apply to a clerk for the issuance of notices to attend in respect of persons who may be witnesses in the proceedings.

(2) On an application being made under subsection (1), a clerk shall issue notices to attend in respect of those persons who may be witnesses in proceedings under this Part.

(3) A person may serve a notice to attend

(a) by showing it to the person named in the notice to attend and delivering to that person a copy of the notice to attend and the prescribed witness fee, or

(b) as directed by the Court.

(4) A person served with a notice to attend under this section shall attend the proceedings in accordance with the terms prescribed in the notice to attend.

(5) A notice to attend issued under this section has the same effect as a notice to attend given in a proceeding in the Court of Queen's Bench and is enforceable in the same manner.

RSA 1980 cP-20 s45

Proof of service

46 For the purposes of this Part, service of a document may be proved

(a) by the oral testimony of the person serving it,

(b) by an affidavit of service proving the service, or

(c) by an affidavit of service proving the mailing by double registered mail or certified mail and exhibiting the acknowledgment of receipt of the double registered letter or certified letter purporting to be signed by the person to be served or by any person receiving the letter on his behalf.

RSA 1980 cP-20 s46

Payment
into Court

47(1) A party to an action under this Part may at any time before the date of the hearing pay into the Court a sum of money to satisfy, as the case may be,

- (a) the plaintiff's claim and costs, or
- (b) the defendant's counterclaim and costs.

(2) On a person making a payment under subsection (1), a clerk shall send to the other party to the action by registered mail a notice setting forth the date payment was made and separate amounts paid in respect of the claim or counterclaim and the costs.

(3) If a person accepts in writing the payment made under subsection (1) in full satisfaction of his claim or counterclaim, as the case may be, and costs, a clerk shall pay the money out to that person.

(4) If a person proceeds with his claim or counterclaim after receiving a written notice of the payment into the Court in respect of his claim or counterclaim and does not recover a greater sum than that amount paid into the Court, he shall be liable to the other party to the action for those costs that the Court considers proper.

(5) If money paid into Court under subsection (1) is not paid out under subsection (3), the Court may make an order with respect to the disposition of that money.

RSA 1980 cP-20 s47

Time of hearing

48(1) If a summons is properly served, the Court shall hear the matter on the return date of the summons.

(2) Notwithstanding subsection (1), the Court may adjourn the matter to a subsequent date

- (a) on the application of a party to the action,
- (b) on the non-appearance of a party to the action, or
- (c) if there is insufficient time to hear the matter on the date set for the hearing.

RSA 1980 cP-20 s48

Parties confined
to particulars

49(1) At the hearing of an action under this Part, the parties shall be confined to the particulars set out in the summons and the statement of counterclaim.

(2) Notwithstanding subsection (1), if the Court is satisfied that sufficient cause is shown, it may allow the summons or statement of counterclaim, as the case may be, to be amended.

RSA 1980 cP-20 s49

Admission of
liability

50 A party to an action under this Part may admit his indebtedness or liability, as the case may be, by filing a notice to that effect with the Court and on the notice being filed the Court may order that judgment be entered on the claim or counterclaim, as the case may be.

RSA 1980 cP-20 s50

Taking of
evidence

51(1) A complete record of the evidence of a hearing shall be taken

- (a) by a court reporter appointed pursuant to the Alberta Rules of Court, or

(b) by means of a sound recording machine as provided under the *Mechanical Recording of Evidence Act*.

(2) If for any reason the evidence given at a hearing cannot be taken in accordance with subsection (1), the Court shall

(a) cause a summary of the evidence of a witness to be taken down in a manner determined by the Court,

(b) read to the witness the summary taken of the witness' evidence, and

(c) certify on the summary that it is a summary of the evidence given by that witness at the hearing.

RSA 1980 cP-20 s51

Withdrawal
of claim

52(1) A party to an action under this Part may

(a) withdraw his claim or counterclaim, as the case may be, or

(b) consent to a judgment being entered in favour of the other party

at any time prior to the hearing of the action by filing a notice to that effect with the Court.

(2) On a person filing a notice under subsection (1), a clerk shall send to the other party to the action by registered mail a notice stating that the claim or counterclaim has been withdrawn or that a judgment has been entered in favour of the other party, as the case may be.

RSA 1980 cP-20 s52

Dismissal
of claim

53(1) If a plaintiff fails to appear on the date set for a hearing, the Court may dismiss the plaintiff's claim.

(2) If the Court dismisses a plaintiff's claim under subsection (1), it shall not give judgment on any counterclaim asserted by the defendant until the defendant has presented his case in respect of the counterclaim

(a) by the oral evidence given under oath of the defendant and any witnesses he may have, or

(b) by means of affidavit evidence if the Court is satisfied that oral evidence cannot reasonably be presented to the Court.

RSA 1980 cP-20 s53

Default judgment

54(1) If a defendant fails to appear on the date set for a hearing, the Court may, on proof that the summons has been properly served,

(a) enter a default judgment if the claim is for a debt or liquidated demand, or

(b) in any other case, note the defendant in default and proceed to assess the damages or adjourn the matter to a subsequent date for assessment of damages.

(2) If a judgment is entered in default or the defendant is noted in default, the Court may dismiss any counterclaim asserted by the defendant.

RSA 1980 cP-20 s54; 1983 c43 s3

Setting aside
default judgment

55 The Court may, on any terms it considers proper, set aside or vary any judgment entered by default.

RSA 1980 P-20 s55

Setting-off claim

56(1) Subject to this section, a counterclaim shall, to the extent it is established, be applied in satisfaction of any claim established by the plaintiff.

(2) If a counterclaim is established that

(a) exceeds the amount established by the plaintiff in his claim, the Court shall give judgment in favour of the defendant in the amount of the excess, or

(b) is less than the amount established by the plaintiff in his claim, the Court shall give judgment in favour of the plaintiff for the difference.

(3) In the event that both a claim and a counterclaim are established, the Court may, if it awards costs for and against both the plaintiff and defendant, make an order for a net amount of costs in favour of the party entitled to them.

1978 c70 s56

Certificate
of judgment

57(1) If a judgment is given under this Part, a clerk shall after it is given prepare a certificate of judgment and furnish a copy of the certificate of judgment to each party to the action.

(2) A copy of the certificate referred to in subsection (1) is admissible in evidence as prima facie proof as to its contents in any court dealing with a subsequent proceeding relating to the action without proof of the authenticity of the clerk's signature or any other proof.

(3) The person in whose favour judgment is given may file the certificate of judgment in the Court of Queen's Bench and on being filed

(a) the judgment becomes a judgment of the Court of Queen's Bench, and

(b) execution and garnishee summons may be issued according to the ordinary procedure of the Court of Queen's Bench.

1978 c70 s57; 1978 c51 ss37,38(50)

Appeal

58(1) Any party to an action under this Part may appeal the decision of the Provincial Court to the Court of Queen's Bench by

(a) filing with a clerk of the Provincial Court a notice of appeal setting forth the grounds of appeal and serving the notice of appeal on

(i) the respondent or such other person as the Court of Queen's Bench directs, and

(ii) any other person that the Court of Queen's Bench directs, within 30 days after the judgment was made,

(b) filing in the Court of Queen's Bench

(i) the notice of appeal referred to in clause (a), and

(ii) an affidavit of service of the notice of appeal,

not later than 7 days after the last day for service of the notice of appeal on those parties served pursuant to clause (a), and

(c) depositing with a clerk of the Provincial Court, within

(i) the period fixed by clause (b), or

(ii) any longer period resulting from an order made under subsection (3),

security for costs in the amount of \$100 or a lesser amount as may be determined by the Provincial Court.

(2) The Court of Queen's Bench may, on application made before or after the expiration of the periods fixed by subsection (1)(a) and (b), by order fix a further period not exceeding 30 days from the date of the order, within which the service and filing referred to in subsection (1)(a) and (b) may be effected.

(3) Notwithstanding subsection (1)(c), on application by the appellant, the Provincial Court may by order allow security for costs to be by way of bond of the appellant and at least one other person in the sum of \$100 conditioned on the due payment by the appellant of all costs that may be ordered to be paid by him.

1978 c70 s58; 1978 c51 s37

Material
on appeal

59 On a notice of appeal being filed with and the security for costs being deposited with a clerk of the Provincial Court, the clerk of the Provincial Court shall forward to the clerk of the Court of Queen's Bench the security for costs, the record of the evidence taken, any money paid into the Provincial Court other than court fees and all other material in the possession of the Provincial Court that pertains to the matter being appealed.

1978 c70 s59; 1978 c51 s37

Dismissal
of appeal

60(1) If an appellant fails to comply with the requirements of section 58, the appeal shall be dismissed.

(2) If an appeal is dismissed under subsection (1), the Court of Queen's Bench may make any order as to costs that it considers proper.

1978 c70 s60; 1978 c51 s37

Appeal not stay
of proceedings

61 Notwithstanding anything in this Part, an appeal does not operate as a stay of proceedings under the judgment being appealed except as ordered by the Court of Queen's Bench.

1978 c70 s61; 1978 c51 s37

Time of appeal

62(1) On sections 58 and 59 being complied with, the Court of Queen's Bench shall set down the appeal for hearing at a regular sitting and the clerk of the Court of Queen's Bench shall post in a conspicuous place in his office a notice of every appeal that has been set down for hearing and notice of the time when it will be heard.

(2) An appeal shall not be set down for hearing within 10 days from the time that service of the notice of appeal was effected on the

respondent, unless the parties, their counsels or agents otherwise agree in writing.

1978 c70 s62; 1978 c51 s37

Hearing of appeal **63** The appeal under this Part shall be heard as a trial de novo unless otherwise ordered by the Court of Queen's Bench.

1978 c70 s63; 1978 c51 s37

Adjournment of appeal **64** The Court of Queen's Bench may adjourn the appeal from time to time as circumstances require and may make any order that it considers proper in respect of witness fees and other costs.

1978 c70 s64; 1978 c51 s37

Decision on appeal **65(1)** The Court of Queen's Bench shall

- (a) hear and determine the appeal,
- (b) give its judgment, and
- (c) make an order awarding costs, if any, to the parties, including costs of all proceedings previous to the appeal.

(2) The decision of the Court of Queen's Bench is final and cannot be further appealed.

1978 c70 s65; 1978 c51 s37

Entry of appeal decision **66** A party to the appeal may have the judgment entered as a judgment of the Court of Queen's Bench and execution and garnishee summons may be issued on it in accordance with the ordinary procedure of the Court of Queen's Bench.

1978 c70 s66; 1978 c51 s37

Transfer of action **67(1)** If at any time in an action commenced under this Part it appears that a claim, counterclaim or defence involves a matter that is beyond the jurisdiction of the Court, the Court may order that the action be transferred to the Court of Queen's Bench.

(2) On an order being made under subsection (1), a clerk of the Provincial Court shall forward to the clerk of the Court of Queen's Bench the record of any evidence taken, any money paid into the Provincial Court other than court fees and all other material in the possession of the Provincial Court that pertains to the action in respect of which the order was made.

(3) On an action being transferred into the Court of Queen's Bench under this section, the Court of Queen's Bench may, on any conditions it considers proper,

- (a) continue the action to completion, or
- (b) order the action to be recommenced.

(4) If an action is transferred into the Court of Queen's Bench and a party to that action had abandoned a portion of his claim or counterclaim under section 36(2), that party may, subject to any conditions that the Court of Queen's Bench considers proper, withdraw the abandonment of that portion of his claim or counterclaim and proceed on his entire claim or counterclaim, as the case may be.

1978 c70 s67; 1978 c51 s37

Costs and
adjournment

68 The Court may at any time in an action under this Part award costs and grant adjournments on any conditions it considers proper.
1978 c70 s68

Payment of fees

69 A document shall not be issued, filed or entered, as the case may be, under this Part until the prescribed fee payable in respect of that issuance, filing or entering has been paid.
1978 c70 s69

Refusal to issue
documents

70(1) The Court may, if it considers it proper to do so, order a clerk not to issue

- (a) a summons under section 38,
- (b) a statement of counterclaim under section 43, or
- (c) a notice to attend under section 45.

(2) An order made under subsection (1)(a) or (b) does not prejudice the right of a person having a claim or counterclaim to proceed on it in any other manner permitted by law.
1978 c70 s70

Representation
of party

71(1) A person is entitled to be represented by

- (a) a barrister and solicitor, or
- (b) an agent

in respect of any proceedings under this Part.

(2) Subsection (1)(b) does not apply to proceedings that take place in the Court of Queen's Bench.
1978 c70 s71; 1979 c33 s8(6)

Effect of
informality

72 No proceeding under this Part shall be held invalid for informality if there has been a substantial compliance with the requirements of this Part.
1978 c70 s72

Rules of Court

73 If anything necessary for carrying out the objects of this Part is not contained in this Act or the regulations, the remedies, practice and procedure contained in the Alberta Rules of Court may be applied.
1978 c70 s73

PROVINCIAL COURT ACT

CHAPTER P-20

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